



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 26, 2004

Mr. Ignacio Perez
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR2004-6216

Dear Mr. Perez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 205975.

The City of McAllen (the "city") received a request for the "names, addresses and telephone numbers of every person who has applied for the position of Fire Chief since the termination of Dr. Anthony Rogers." You indicate that the city has released "redacted information" to the requestor. You claim that the information the city seeks to withhold is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

As a preliminary matter, you contend that social security numbers and e-mail addresses of applicants for the position of Fire Chief are excepted from disclosure. We note that the requestor has not asked for this information. Accordingly, we find that social security numbers and e-mail addresses of applicants for the position of Fire Chief are not responsive to the present request and need not be released at this time. Based on this finding, we do not reach your claimed exceptions to disclosure for such information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. You raise section 143.089 of the Local Government Code, which pertains to personnel records of civil service employees. We understand that the city is a civil service city under chapter 143 of the Local Government

Code. We note, however, that section 143.089 applies to personnel records of fire fighters and police officers employed by the city. Local Gov't Code § 143.089(a), (g). You state that the records at issue pertain to applicants who are "potential employees." You do not inform us, nor do the submitted records indicate, that any of the applicants at issue are employed by the city. Thus, we find that section 143.089 of the Local Government Code is not applicable to the records at issue, and we determine that the city may not withhold any of the submitted information under section 552.101 on that basis.

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). As noted, you do not inform us that any of the applicants at issue are employees of the city. We therefore determine that the information at issue is not "information in a personnel file" and is consequently not excepted from disclosure under section 552.102.

You appear to argue that the requested names, home addresses, and home telephone numbers are protected from disclosure by common-law privacy. Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. The names, home addresses, and home telephone numbers of the applicants are not highly intimate or embarrassing information. Moreover, there is a legitimate public interest in the identities of applicants for the position of Fire Chief. We determine that the information at issue is not protected by common-law privacy and may not be withheld under section 552.101 on that basis. *See* Open Records Decision No. 455 (1987) (home addresses and telephone numbers of private citizens generally not protected under privacy exceptions of Public Information Act).

Finally, we understand you to represent that the requested home addresses and home telephone numbers are excepted under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely elect to keep this information confidential pursuant to section 552.024. Because you do not indicate that the applicants at issue are current or former officials or employees of the city, we determine that section 552.117 does not apply to the requested addresses and telephone numbers. *See* Open Records Decision No. 455 (1987) (statutory predecessor to section 552.117 does not except information

pertaining to applicants who are not employees). Accordingly, the city may not withhold this information under section 552.117.

In summary, we find that your claimed exceptions to disclosure are not applicable to the requested names, addresses, and telephone numbers. We therefore conclude that the city must release this information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within ten calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within ten calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Saldivar', with a long horizontal flourish extending to the right.

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 205975

Enc: Submitted documents

c: Ms. Karol Montes
Citizens for a Better and Safer McAllen
1110 North 5th
McAllen, Texas 78501
(w/o enclosures)